

Date of decision: 13.3.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. B. G. Jani, advocate for petitioners.

Mr. T.H. Sompura, A.G.P. for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

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March 13, 1997

Oral judgment:

Petitioners purchased land bearing Survey No. 506 of Mouje Abhva, Taluka Choryasi, District Surat, admeasuring about 20 acres vide different registered sale deeds and mutation entry was made in revenue record vide entries No. 955, 1197, 1198, 2201, 2202, 2203 and 2204. From the record it transpires that the said entries were not certified. In the meanwhile, respondent No.1 initiated suo motu revision proceedings in connection with prior entry No. 594 dated 9.12.1976 vide which the predecessor in title of petitioner had effected partition of the said

land amongst themselves. As the prior entry was under consideration, the respondent No.1 also deleted from the record uncertified mutation entries in favour of petitioners. Ultimately, the respondent No.1 vide his order dated 28.9.1996/1.10.1996 cancelled prior entry No. 594. As the same was done without hearing the petitioners who are owners and to be vitally affected, they have filed this writ petition.

Without referring to the merits of the order, Mr. Sompura, learned A.G.P. for the respondents, states that the order passed by respondent No.1 on 28.9.1996/1.10.1996 in suo motu RTS Revision Case No. 21/594/Choryasi has been set aside in revision by the Special Secretary (Appeals), Revenue Department, Government of Gujarat, vide order dated 29.11.1996 and the matter has been remanded for fresh consideration. He further states that as the impugned order has already been set aside, the petition has become infructuous and be disposed of accordingly. Mr.Sompura has also produced certified copy of the order dated 29.11.1996 vide which the impugned order dated 28.9.1996/1.10.1996 has been set aside.

In light of aforesaid development, Mr. Jani for the petitioners fairly concedes that in view of the subsequent order, the impugned order does not remain assailable in the eyes of law. However, he submits that since the petitioners are in actual possession and are successor in title by virtue of legal and valid registered sale deeds they are required to be heard while deciding the proceedings under remand.

It is true that before passing any order the affected party has to be heard consequently, in my view, the petitioners being interested parties are required to be heard on merits. Mr. Sompura also states that while setting aside the impugned order and remanding the matter for fresh trial, the learned Special Secretary (Appeals) also considered that the interested persons were not heard before passing the order as a result of which impliedly respondent No.1 stands directed to decide revision application on merits after giving hearing to all the interested persons. In the result, the respondent No.1 Collector is directed to decide the revision application after giving opportunity of hearing to the petitioners as successor in title and interested persons. It would be open for respondent No.1 to proceed in accordance with law against the petitioners if so required on termination of proceedings on merits. In view of this observation, the petition is disposed of as

does not survive. Rule is discharged. Ad interim relief stands vacated with no order as to costs.